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**Gio Marino De Gbetoff, and others,
Appellants.**

**The Governor and Company of the
London Assurance, Respondents.**

THE RESPONDENTS CASE.

ONE *Lewis Francis De Coninck*, a Merchant of *Antwerp*, applied to the Respondents by himself, or his Agent, to make an Insurance upon a Ship, called, *The Flandria*, then bound from *Ostend* to *China*; and the *Premio* being agreed upon, the Respondents did execute a Policy to the said *De Coninck*, for insuring the Sum of 5000 *l.* upon the Body of the said Ship, from *Ostend* to *China*, and back to *Ostend*.

That, some Years after, Application was made to the said Respondents, in the Name of the said *De Coninck*, to have Satisfaction for a Loss of the said Ship, as to the said Policy; it being alledged, that the said Ship was seized by the Governor of *Bencolen*, an *English* Settlement, in the *East-Indies*; but it did not appear, to the Respondents, that the said *De Coninck*, or any Person, under whom he claimed, had any Property in the Ship; nor did it appear, to the Respondents, whether the said Ship was seized lawfully, or not; for which Reasons the Respondents refused to pay any Loss-Money: And thus the Matter rested till the Year 1728.

The now Appellants exhibited their Bill, in the Court of *Chancery*, against the Respondents, and made the said *De Coninck* a Defendant, and thereby is suggested, that the Ship was seized by the *English* Governor at *Bencolen*, and that the Plaintiffs were severally entitled to Shares of the said 5000 *l.* and alledged they had lost that whole Sum; and farther suggested, that *De Coninck* was only their Trustee: But although so great an Insurance as 5000 *l.* was made, and such Sum pretended to be lost, when they came by their Bill, to particularize their several Interests, they amounted, in all, but to 1600 *l.*

Being

Being sensible that this Demand was very improper in a Court of Equity, the Appellants, in order to give a Countenance to their Bill, charged, that their own Trustee, *De Coninck*, refused to let them make use of his Name at Law, and that they lived Abroad in several distant and remote Places, whereby, and by reason of the great Difficulty of producing Witnesses, *viâ voce*, they were disabled from bringing an Action at Law; and they pray'd a Decree for the 5000*l.* according to their several Proportions.

The Respondents put in an Answer to so much of the Bill as related to a Discovery, but as to the Demand of the 5000*l.* or any Loss-money they demurred, and for Cause of Demurrer shewed, That if the Policy was forfeited, a proper Action at Law lay to recover the Loss-money, and that the Appellants, if they had any just Demand, might have their complete and adequate Remedy by such Action at Law, where Matters of this Nature are properly cognizable, and where the Appellants ought to prove their Interest, and their Loss, and not in a Court of Equity.

January 15,³
1728.

The Demurrer came on to be argued before the Right Honourable the Lord Chancellor, and the Appellants Counsel insisting very much on that Allegation of the Bill, concerning *De Coninck*, the Trustees refusing to permit his Name to be made use of in an Action at Law, His Lordship was pleased to indulge the Appellants with two Months Time to get in the said *De Coninck's* Answer, which they did notwithstanding the pretended Disagreement between them.

By this Answer *De Coninck* went so far in the Appellants Favour, as to swear, He believed that their Loss exceeded 5000*l.* though neither he nor they pretend, that what they call their Interest cost more than 1600*l.* and says, that in Regard to the great Hazard he apprehends he should run, in Case he permitted the Appellants to make use of his Name in bringing an Action against the Company on the Policy, He does not care to permit the Appellants to bring an Action in his Name, he being advised, that, if he should, he would be personally liable to Costs.

By this Answer it plainly appeared, that the Appellants Pretence of an Obstruction by *De Coninck*, was merely fictitious, for he would not venture to swear further than that he did not care to permit his Name to be made use of; and as to Costs, he was in no Danger, for he living at *Antwerp*, was out of the Reach of any Process of the Courts at Law of this Kingdom.

November 21,
1729.

The Demurrer was again argued, and upon a full Consideration of the whole Matter, His Lordship was pleased to allow the same; against which Order the Appellants have appealed, but the Respondents are advised, and humbly insist that it is agreeable to Equity and Justice.

First, For that the Appellants Demand is plainly a Demand at Law, they having nothing to prove but their Interest, and the Loss of the Ship, which are Facts proper to be try'd by a Jury.

Secondly,

Secondly, For that there is no Equity suggested in the Appellants Bill, but a pretended Difficulty to produce Witnesses, and that their Trustee refused to permit them to bring an Action in his Name. The former of which may, with equal Reason, be suggested in almost every Case of a Policy of Insurance, and the latter appears manifestly to be thrown into the Bill, merely to change the Jurisdiction, and is in a great Measure falsify'd by their Trustees Answer; for he does not say *he ever refused*; but that (at the Time of Swearing his Answer) *he did not care* to permit his Name to be made use of.

Thirdly, For that if Bills of this Kind are encouraged, it will be very easy to bring all kinds of Property to be try'd in a Court of Equity.

For these and many other Reasons, the Respondents humbly hope, that the said Order of the 21st of November, 1729. shall be affirmed, and the Appeal dismissed with Costs.

J. Willes,
D. Ryder,

Secondly, For that there is no Equity suggested in the Appellants' Bill, but a pretended Difficulty to produce Witnesses, and that their Testimony is to be taken in a Court of Equity, in his name. The former of which may, with equal Reason, be suggested in almost every Case of a Policy of Insurance, and the latter appears manifestly to be thrown into the Bill, merely to change the Jurisdiction, and is in a great Measure nullified by their Testimony. Answer. For he does not say it is now related, but that at the time of Swearing his Answer, he did not care to permit his Name to be made use of.

Thirdly, For that if Bills of this Kind are encouraged, it will be very easy to bring all kinds of Property to be tried in a Court of Equity.

For that and many other Reasons, the Respondents have shewn, that the said Order of the 1st of November 1720. should be affirmed, and the Appeal dismissed with Costs.

I. Willes
D. Ryder

Gio Marino De Gheroff, and
others, Appellants.

The Governor and Company
of the London Assurance, Re-
spondents.

The Respondents CASE.

To be heard at the Bar of the House
of Lords, on Monday the 1st of
February.

*The Order of the Court of Chancery allowing
the Respond^ts Demurrer was Affirm'd.*